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05-CV-01817-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JOHN KURTZ,
Plaintiff,

v.

CAPGEMINI AMERICA, INC. and GCI,
INC.,
Defendants.

NO. **CV5 1817T**

COMPLAINT FOR FAILURE TO PAY
WAGES, RECISSION AND FOR
COPYRIGHT VIOLATION
AND JURY DEMAND

For his complaint plaintiff John Kurtz alleges as follows:

JURISDICTION AND VENUE

1. This complaint raises claims of copyright violation within the exclusive original jurisdiction of this court pursuant to 28 U.S.C. § 1338, as well as claims under the laws of the State of Washington that are within this court's pendent jurisdiction.

2. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. § 1400 because defendant GCI, Inc. may be found here.

COMPLAINT FOR FAILURE TO PAY
OVERTIME COMPENSATION
AND JURY DEMAND - 1

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1 3. Plaintiff John Kurtz resides in Snohomish County, Washington.

2 4. Defendant Capgemini America, Inc. ("Capgemini") is a foreign
3 corporation doing business in King County Washington.

4 5. Defendant GCI, Inc. ("GCI") is a foreign corporation doing business in
5 King County, Washington.

6 6. Caaspre Technologies, LLC ("Caaspre") is or was a foreign company.
7 On information or belief, Caaspre is now insolvent or otherwise out of business.
8 Caaspre is not now nor has it ever been registered to do business in Washington.

9 FACTUAL ALLEGATIONS

10 7. In March 2005 an authorized agent of Capgemini interviewed Kurtz
11 for a position designing and drafting software for use by GCI. Kurtz applied for the
12 interview in response to a solicitation from Caaspre.

13 8. After the interview, an authorized agent of Capgemini informed Kurtz
14 he would be hired for the job and that he would be employed by Caaspre. He was
15 to be paid \$40 per hour, plus \$4 per hour for the use of his laptop computer, plus
16 he was to be reimbursed for travel expenses.

17 9. Kurtz has never met any agent of Caaspre other than individuals who
18 were employed by Capgemini.

19 10. Kurtz began work in the offices of GCI planning and drafting software
20 for GCI. He was supervised by authorized agents of Capgemini. An authorized
21 agent of Capgemini approved Kurtz's time reports for payment.

1 11. Kurtz received one paycheck from Caaspre, and then payments
2 stopped.

3 12. When his second paycheck was overdue, Kurtz informed his
4 Capgemini supervisors that he would stop work because he was not being paid.
5 His Capgemini supervisors told him to keep working and that they would see that
6 he was paid.
7

8 13. Capgemini was Kurtz's de facto employer.

9 14. Kurtz has not been paid wages for work he performed between March
10 21, 2005 and April 24, 2005, nor for his laptop rental from March 7, 2005 through
11 April 24, 2005. During that period he worked 45 hours per week. He is owed
12 \$9,000 in wages and \$1080 in fees for the rental of his laptop. He also paid
13 \$1,317.74 to travel to Alaska in connection with his work and has not been
14 reimbursed for this expense.
15

16 15. The failure to pay wages and other compensation to Kurtz is willful.

17 16. From the beginning of his work through April 15, Kurtz planned,
18 designed and wrote computer software titled "Calling Card" and he wrote the
19 documentation for Calling Card.
20

21 17. Kurtz wrote Calling Card and its documentation with the
22 understanding that he was transferring his copyright to his employer in
23 exchange for the payment of his wages and other expenses. The failure to pay his
24 wages is a material breach of his employment contract.
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COMPLAINT FOR FAILURE TO PAY
OVERTIME COMPENSATION
AND JURY DEMAND - 3

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20. Kurtz's work for the Caaspre and Capgemini has concluded.

21. Capgemini is liable to Kurtz for his wages, laptop rental, and expenses as his employer. It is also liable for Kurtz's fees and costs pursuant to RCW 49.48.030.

23. Pursuant to RCW 49.52.070, Capgemini is liable to Kurtz for twice the amount owing Kurtz as a result of its and Caaspre's willful failure to pay Kurtz's invoice. Capgemini is also liable for the costs and attorneys fees Kurtz will incur in bringing this action.

25. In reliance on Capgemini's representations that it would assure Kurtz's payment, Kurtz continued to work on the software project described above. Capgemini is estopped to deny an obligation to pay Kurtz his wages and other compensation.

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1 26. In the alternative, Kurtz elects to rescind his agreement to transfer his
2 copyright to his employer because of the employer's material breach of the
3 employment contract. He stands ready to return the two weeks wages he been has
4 paid in exchange for the return of his copyright, and he demands restitution of his
5 copyright interest in Calling Card and its documentation.
6

7 27. As a result of the failure of consideration, Kurtz retains all copyright
8 interests in Calling Card and its documentation. GCI's use and reproduction of the
9 software infringes on Kurtz's copyright and causes him irreparable harm.
10

11 JURY DEMAND

12 28. Plaintiff demands a trial by jury for all issues so triable.

13 WHEREFORE, plaintiff John Kurtz prays for relief against as follows:

- 14 1. For damages in an amount to be proven at trial against Capgemini;
15 2. For such damages to be doubled;
16 3. For interest, costs and attorneys fees from Capgemini;
17 4. In the alternative, for restitution of his copyright to the Calling Card
18 software and its documentation, for an order enjoining GCI from using the same,
19 and for damages from GCI for infringement in an amount to be proven at trial; and
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2 5. For such additional relief as the court deems just.

3 DATED this 2nd day of November, 2005.

4
5 HELSELL FETTERMAN LLP

6
7 By 

8 Bradley H. Bagshaw, WSPA #11729
9 Attorneys for Plaintiff
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COMPLAINT FOR FAILURE TO PAY
OVERTIME COMPENSATION
AND JURY DEMAND - 8

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